

United States Department of the Interior



OFFICE OF SURFACE MINING
Reclamation and Enforcement
Casper Area Office
150 East B St. Room 1018
Casper, WY 82601



September 20, 2019

CERTIFIED MAIL 7016 3010 0000 7660 5848

Shannon Anderson
Powder River Basin Resource Council
934 North Main Street
Sheridan, WY 82801

RE: Citizen Complaint and Request for Investigation Regarding Wyoming Coal Mine Permits PT-0214 and PT-0428 – The Belle Ayr and Eagle Butte Mines

Dear Ms. Anderson:

On August 28, 2019, the Office of Surface Mining Reclamation and Enforcement (OSMRE) received a citizen complaint letter from the Powder River Basin Resource Council (PRBRC), concerning the Belle Ayr and Eagle Butte mines located in Campbell County, Wyoming. The complainants also sent the letter simultaneously to the Wyoming Department of Environmental Quality – Land Quality Division (LQD) on August 26, 2019.

The complainants claim that the Eagle Butte and Belle Ayr permit holder, Contura Coal West, LLC (Contura), (1) is in violation of state and federal rules that require a permittee to submit an update to its annual report if the permittee anticipates a Temporary Cessation of Operations (TCO) to occur longer than thirty days, and (2) is also in violation of state and federal requirements requiring updates to the permits' mine and reclamation plans. As a result of these purported violations, the complainants request that the LQD investigate and issue a notice of violation to Contura. Should LQD fail to issue a notice of violation to Contura, the complainants request that OSMRE conduct a federal investigation/inspection and take appropriate enforcement action.

LQD completed its investigation into the two alleged violations and sent its findings to both PRBRC and OSMRE on September 13, 2019. LQD's investigation concluded that no violations exist in relation to TCO or the approved mine and reclamation plans for the Belle Ayr and Eagle Butte permits under Wyoming's approved program.

After carefully reviewing the complaint, supporting documentation, and Wyoming's response, OSMRE has no reason to believe there is a violation of the approved Wyoming program, the Surface Mine Control and Reclamation Act (SMCRA), or the implementing regulations. OSMRE finds that Wyoming has good cause for not taking enforcement action, because no violation exists. Because OSMRE has no reason to believe a violation exists, there is no need for OSMRE to conduct a federal inspection.

The complainant erroneously presumes that at Blackjewel's bankruptcy filing, the Eagle Butte and Belle Ayr mines fell automatically into TCO as evidenced by the statement on Page 2 of the complaint, "It is very public knowledge that the Eagle Butte and Belle Ayr Mines were shut down on July 1, 2019, stemming from events in the Blackjewel bankruptcy proceedings. The mines have been in temporary cessation since that time – over seven weeks."

LQD's response letter to OSMRE and PRBRC indicates that there has not been a TCO at Belle Ayr or Eagle Butte mines and that Blackjewel, LLC is the current operator of the Eagle Butte and Belle Ayr mines. When Blackjewel filed for Chapter 11 bankruptcy on July 1, 2019, it put both of these mines into a reduced operational status. With debtor-in-possession financing, Blackjewel, in cooperation with Contura and the bankruptcy court, has kept workers onsite since July 5, 2019 to secure the mines premises, perform safety measures, keep the two mines in compliance with their approved permits, and extract due diligence coal for resource protection and commercial sale. The LQD has conducted multiple inspections of the Belle Ayr and Eagle Butte mines to verify the compliance of the operations. OSMRE has also conducted oversight inspections at Belle Ayr and Eagle Butte mines on July 24, 2019 and can confirm that surface coal mining and reclamation operations are occurring at both mines.

Although Blackjewel has slowed its mining operations due to economic and manpower limitations, these circumstances are not considered a TCO by the LQD because the mines are still conducting due diligence commercial coal production for resource protection, are in compliance with the approved surface coal mine and reclamation plan sequences in their respective permits, are current on their financial assurance requirements, and are conducting routine maintenance for site environmental compliance.

While the Belle Ayr and Eagle Butte mines may have ceased surface coal mining and reclamation operations for a very brief period (July 1, 2019 to July 5, 2019), the brief cessation of operations does not meet the 30 day requirement in the Wyoming DEQ's Coal Rules at Chapter 4, Section 2(u) for TCO.

You may request informal review of this decision under 30 C.F.R. § 842.15(a). Any request for review must be in writing and include a statement of how you are or may be adversely affected and why the decision merits review. You should address such request to:

Office of Surface Mining Reclamation and Enforcement
David Berry, Regional Director
1999 Broadway, Suite 3320
Denver, CO 80202

If you have any questions about this determination, please contact me at (307) 261-6550 or jfleischman@osmre.gov.

Sincerely,

A handwritten signature in blue ink, consisting of a large, stylized 'J' followed by a horizontal line and a small flourish.

Jeffrey W. Fleischman, Chief
Denver Field Division